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FORM OF
AMENDED AND RESTATED AGREEMENT OF
LIMITED PARTNERSHIP
OF
[EQUITABLE CAPITAL PARTNERS II, L.P.]
[EQUITABLE CAPITAL PARTNERS (RETIREMENT FUND) II, L.P.]*

AMENDED AND RESTATED AGREEMENT OF LIMITED PARTNERSHIP dated as of _____ of [EQUITABLE CAPITAL PARTNERS II, L.P.] [EQUITABLE CAPITAL PARTNERS (RETIREMENT FUND) II, L.P.]* among EQUITABLE CAPITAL MANAGEMENT CORPORATION, a Delaware corporation, as Managing General Partner, _____, as Independent General Partners, James P. Pappas, as the Initial Limited Partner, and those Persons hereinafter admitted as and listed in the books and records of the Partnership as Additional Limited Partners and Substituted Limited Partners.

WHEREAS, the Partnership has heretofore been formed as a limited partnership under the Delaware Revised Uniform Limited Partnership Act pursuant to a Certificate of Limited Partnership dated as of September 28, 1989, and filed in the office of the Secretary of State of the State of Delaware on September 28, 1989, as amended and restated through the date hereof; and

WHEREAS, the parties hereto desire to provide for the governance of the Partnership and to set forth in detail their respective rights and duties relating to the Partnership and to amend and restate in its entirety the

* This form of Amended and Restated Limited Partnership Agreement is the form of limited partnership agreement for each of Equitable Capital Partners II, L.P. and Equitable Capital Partners (Retirement Fund) II, L.P. Bracketed material contained herein in regular type is material that will be only included in the limited partnership agreement for Equitable Capital Partners II, L.P. Bracketed material contained herein in bold face type is material that will be included only in the limited partnership agreement of Equitable Capital Partners (Retirement Fund) II, L.P.

existing Agreement of Limited Partnership of the Partnership to so provide;

NOW, THEREFORE, in consideration of the mutual promises and agreements made herein, the parties, intending to be legally bound, hereby agree as follows:

ARTICLE ONE

DEFINED TERMS

The defined terms used in this Agreement shall, unless the context otherwise requires, have the meanings specified in this Article One. The singular shall include the plural and the masculine gender shall include the feminine, the neuter and vice versa, as the context requires.

"Accountants" means Deloitte Haskins & Sells or such other nationally recognized firm of independent certified public accountants as shall be engaged from time to time by the Independent General Partners for the Partnership.

"Acquisition Expenses" means (1) to the extent, if any, not borne by a third party or the Investment Adviser, the Partnership's pro rata share of any legal fees and related expenses and any fees of business consultants, appraisers and accountants, investment banking fees and similar fees incurred in connection with the purchase or proposed purchase of any Enhanced Yield Investment and (2) to the extent, if any, not borne by a third party or the Investment Adviser, any other legal fees or related expenses, the cost of any credit reports or appraisals, or miscellaneous expenses (including travel and communications expenses) borne by the Partnership in connection with selection, evaluation, and acquisition by the Partnership of any Enhanced Yield Investment, or any unreimbursed organizational fees of the Partnership.

"Acquisition Fee" means, to the extent, if any, not borne by a third party or the Investment Adviser, any fee or commission paid by or on behalf of the Partnership in connection with the selection, evaluation, investigation, negotiation or acquisition of any proposed or acquired Enhanced Yield Investment, as the case may be.

"Act" means the Delaware Revised Uniform Limited Partnership Act (6 Del. C. Section 17-101, et seq.), as amended from time to time, and any successor to such Act.

"Additional Acquisition" means (1) an Enhanced Yield Investment made out of Available Capital Proceeds directly or indirectly resulting from the Sale of an Enhanced Yield Investment or (2) a Follow On Investment.

"Additional Limited Partner" means any Person admitted to the Partnership pursuant to Section 3.3 and shown as a Limited Partner on the books and records of the Partnership.

"Advisers Act" means the Investment Advisers Act of 1940 and the rules and regulations thereunder, as amended from time to time.

"Affiliate" means, when used with reference to a specified Person, an "affiliated person", as defined in the 1940 Act, of such Person.

"Agreement" means this Amended and Restated Agreement of Limited Partnership, as originally executed and as amended, modified, supplemented or restated from time to time, as the context requires.

"Alien" means (a) a Person who is a citizen of a country other than the United States; (b) a Person (other than an individual) that is organized under the laws of a government other than the government of the United States or of any state, territory or possession of the United States (including, without limitation, a Non-U.S. Partner); (c) a government other than the government of the United States or of any state, territory or possession of the United States; or (d) a representative of, or a Person controlled by, any of the foregoing.

"Attribution Orders" means the FCC's decision in Corporate Ownership Reporting and Disclosure by Broadcast Licensees, 58 Rad. Reg. 2d (P&F) 604 (1985), as modified in 1 FCC Rcd. 802 (1986).

"Available Capital" means, as of any date of determination, (1) [the sum of (a)] the aggregate Net Capital Contributions of the Partners [and (b) the aggregate amount of Outstanding Debt on such date], (2) minus the sum of (a) cumulative amount of Returns of Capital

previously distributed to Partners and (b) realized losses from Investments.

"Available Capital Proceeds" has the meaning given in Section 4.2A.

"Available Cash from Investments" means, with respect to any period selected by the Partnership for accounting purposes, the excess of cash receipts of the Partnership (other than Capital Contributions, or the proceeds of any Capital Transaction or Compensatory Payments) during such period over the sum of the following: (1) the amount of cash (except cash withdrawn from reserves therefor) disbursed in such period in order to obtain cash receipts (other than Capital Contributions, the proceeds of any Capital Transaction [or Financing], or Compensatory Payments) including, but not limited to, the Fund Administration Fee, ordinary annual legal fees and related expenses in excess of \$100,000 and extraordinary legal and related expenses, [(2) payments of principal of and interest on loans to the Partnership, (3)] [(2)] the amount of cash (except cash withdrawn from reserves therefor) disbursed in such period to pay other costs and expenses incident to the ownership and operation of Enhanced Yield Investments or the operation and management of the Partnership including, but not limited to, the Investment Advisory Fee and [(4)] [(3)] payments actually made or amounts actually allocated during such period to reserves to pay taxes, insurance, [debt service (which may include ongoing debt commitment fees, based on undrawn-upon debt Financing, but not initial nonrecurring fees and expenses in connection with arranging or placing such Financing)] and/or other costs, expenses and liabilities of the type described in clauses (1) [through (3)] [and (2)] of this definition and for the payment of which the General Partners believe cash from the operations of the Partnership might not be available when such payments are required to be made.

"Booked-up Expenses" has the meaning given in Section 4A.2D.

"Bridge Investment" means an interim debt investment by the Partnership which is approved as a "Bridge Investment" by the Independent General Partners and which at the time of such approval the Investment Adviser expects to be refinanced by the issuer thereof with permanent financing.

"Capital Account" means, with respect to any Partner, such Partner's Capital Contribution (1) increased as of the last day of each Fiscal Year of the Partnership by such Partner's allocable share of Partnership Profit for such Fiscal Year, (2) decreased as of such date by (a) the amount of cash distributed to such Partner during such Fiscal Year (other than amounts distributed to such Partner pursuant to Section 3.4 or 3.5C) and (b) such Partner's allocable share of the Partnership Loss for such Fiscal Year, and (3) as otherwise increased or decreased as provided in Article Four-A or in accordance with the tax accounting principles set forth in Treasury Regulation 1.704-1(b)(2)(iv).

"Capital Contribution" means, at any specified time, the total amount of money contributed to the Partnership (including any payment made pursuant to an MGP Note) by all the Partners or any class of Partners or any one Partner, as the case may be (or the predecessor holders of the Interest of such Partners or Partner), reduced in the case of the Partners or any one Partner, as the case may be, by the amount of any funds distributed to the Partners or such Partner, as the case may be, pursuant to Section 3.4 or 3.5C. to, but not including, such specified time.

"Capital Transaction" means any Sale [or Refinancing].

"Carrying Value" has the meaning given in Section 4A.2B.

"Certificate" means the Certificate of Limited Partnership as originally filed with the Secretary of State of the State of Delaware pursuant to the Act, and as amended, modified, supplemented or restated from time to time, as the context requires.

"Closing" means a closing of the sale of Interests in the Partnership.

"Code" means the Internal Revenue Code of 1986, as amended (or any corresponding provision of succeeding law).

"Coinvestment" means an Enhanced Yield Investment in securities of a Portfolio Company, which securi-

ties are purchased in the same transaction by the Other Partnership, the Investment Adviser or any Equitable Affiliate.

"Communications Act" means the Communications Act of 1934, as amended from time to time.

"Compensatory Payment" as of any time of determination means the lesser of (1) the cumulative amount by which the Available Capital Proceeds related to the Sales of Enhanced Yield Investments then or theretofore made are less than the Partnership's cost of such Enhanced Yield Investments, and (2) the excess, if any, of cumulative MGP Distributions then or theretofore made over the cumulative amounts of payments then or theretofore made as Compensatory Payments pursuant to Sections 4.1B(2)(a) and 4.2B(2)(a) and (c).

"Consent" means the prior written approval of a Person, given as provided in Section 11.1, or the affirmative vote of approval of such Person at a meeting called and held pursuant to Section 11.2, as the case may be, to do the act or thing for which the approval is solicited, or the act of granting such approval, as the context may require.

"Deemed Distribution Amount" means, as of any determination date for the allocation of Profits and Losses, with respect to any Partner, the amount that such Partner would receive as a distribution (reduced by the amount of any distributions then scheduled to be made to such Partner) if all Partnership assets were sold as of such date for an amount equal to the Carrying Value of such assets and the proceeds applied in accordance with Sections 4.1 and 4.2 assuming (i) that no reserves described in Section 4.2A(1)(a)(v) are required other than reserves for which the Partnership has claimed or is currently entitled to claim a federal income tax deduction or loss and (ii) that any Deferred Distribution Amount is distributed to the Limited Partners. The Deemed Distribution Amount of the Partners shall be determined taking into account the outstanding principal amount of any MGP Notes to be contributed to the capital of the Partnership upon liquidation.

"Deemed Sales Commissions and Financial Advisory Fees" means sales commissions and financial advisory fees waived (i) with respect to sales of Units to the Managing

General Partner, the Fund Administrator, any Affiliate of either, any director, officer, employee or agent of any of the foregoing or any employee benefit plan of any for the foregoing or (ii) with respect to volume discounts for sales of Units.

"Deferred Distribution Amount" means, at any specified time, the sum of the amounts of distributions then or theretofore payable to the Managing General Partner which have been deferred pursuant to Section 4.1C, clause (ii) of Section 4.2B(2)(d), clause (ii) of Section 4.2B(2)(e) or Section 4.2C.

"Distributable Capital Proceeds" has the meaning given in Section 4.2A.

"Distributable Cash From Investments" means, with respect to any period selected by the Partnership for accounting purposes, the sum of (1) the excess of the sum of Available Cash from Investments for such period and amounts withdrawn from reserves and no longer necessary to be so maintained in such reserves over amounts of Available Cash from Investments actually applied during such period to Additional Acquisitions, or to the payment of Acquisition Fees[,] [and] Acquisition Expenses[, and Financing Fees and/or Financing Expenses (whether or not paid during such period) attributable to such period in accordance with the Partnership's method of accounting] in connection with such Additional Acquisitions, or to the creation and maintenance of reserves for making Additional Acquisitions and (2) the amount of Compensatory Payments made by the Managing General Partner to the Partnership during such period. For the purpose of calculating the amount of withdrawals from reserves to be included in clause (1) above, such amount shall only include funds the source of which at the time added to reserves had been from amounts which would have been included in Available Cash from Investments had they not been added to reserves, and when making such determination, the funds last added to reserves shall be the first withdrawn.

"Enhanced Yield Distribution" means any distribution made pursuant to Section 4.1B(2) or 4.2B(2).

"Enhanced Yield Investment" means a Mezzanine Investment, Other Investment, Bridge Investment or Follow On Investment held by the Partnership.

"Equitable Affiliate" means Equitable Life, any subsidiary of Equitable Life (other than Equitable Capital), or any of the Equitable Deal Flow Fund, L.P., Equitable Capital Private Income and Equity Partnership II, L.P., Equitable Capital Partners, L.P., and Equitable Capital Partners (Retirement Fund), L.P., each a Delaware limited partnership, and any funds with an investment objective similar to that of the Partnership (other than the Other Partnership) that may be sponsored or organized by Equitable Capital and any Equitable Capital advisory accounts with an investment objective similar to that of the Partnership.

"Equitable Capital" means Equitable Capital Management Corporation, a Delaware corporation, the business address of which is 1285 Avenue of the Americas, New York, New York 10019.

"Equitable Capital Partners I Partnerships" means Equitable Capital Partners, L.P., and Equitable Capital Partners (Retirement Fund), L.P., each a Delaware limited partnership.

"Equitable Life" means The Equitable Life Assurance Society of the United States, a New York mutual life insurance company.

"Exempt Investment" means an investment in cash items, Government Securities (as such term is used in Section 2(a)(16) of the 1940 Act) or other high quality debt securities maturing within one year of the time of the investment by the Partnership in such security.

"FCC" means the Federal Communications Commission.

"Federal Tax Allowance" means, in connection with a determination of the amount of Distributable Cash from Investments pursuant to Section 4.1 or Distributable Capital Proceeds pursuant to Section 4.2 for any fiscal period of the Partnership, an amount equal to the highest federal income tax rate applicable (including any surcharges thereon) to individual taxpayers multiplied by the Partners' shares of Partnership taxable income for such period (assuming that (1) there have not been any material changes subsequent to the date of the original execution of this Agreement in the federal income tax laws, (2) such Partners have been Partners since the closing of the

sale of their units of limited partnership interest pursuant to the Registration Statement and (3) such Partners are not subject to the alternative minimum tax).

"Final Closing" means the last Closing pursuant to the Prospectus.

["Financing" means any borrowing incurred or made to finance the Partnership's purchase of any Enhanced Yield Investment, or any component thereof.]

["Financing Expenses" means, to the extent, if any, not borne by a Portfolio Company or by the Investment Adviser, any legal fees and related expenses, the cost of any credit reports or appraisals, recording and filing fees or miscellaneous expenses borne by the Partnership in connection with the negotiation and documentation of Partnership borrowings.]

["Financing Fee" means any fee or commission borne by the Partnership and paid to any other Person for placing or arranging any Financing, but does not include Financing Expenses.]

"Fiscal Year" means the calendar year.

"Follow On Investment" means an investment (other than a Temporary Investment) in the securities of a Portfolio Company in which the Partnership holds immediately prior thereto a Mezzanine or Other Investment and which investment has been approved by the Independent General Partners, or has been determined by the Independent General Partners to meet the Guidelines.

"Fund Administrator" means ML Fund Administrators Inc., a Delaware corporation and an indirect wholly-owned subsidiary of Merrill Lynch & Co., Inc., or any successor thereto or fund administrator under any agreement described in Section 5.2B(5).

"General Partners" means the Independent General Partners and the Managing General Partner and/or any other Person that becomes a successor or additional General Partner of the Partnership as provided herein, in such Person's capacity as a general partner of the Partnership, and who is identified as a general partner of the Partnership on the books and records of the Partnership.

"Gross Capital Contributions represented by an Investment" means as to any Temporary Investment or Enhanced Yield Investment, as the context requires, at any specified time, an amount computed as follows:

$$GCC I = NCCI \times CCE$$

Where: GCC I = Gross Capital Contributions
represented by an Investment
NCCI = Net Capital Contributions
represented by an Investment
CCE = Capital Contributions Equivalent
Factor

$$CCE = \frac{1}{1 - \frac{(Organizational \text{ and Offering Expenses} + \text{Deemed Sales Commissions and Financial Advisory Fees})}{(Total \text{ Capital Contributions} + \text{Deemed Sales Commissions and Financial Advisory Fees})}}$$

"Guidelines" means the guidelines approved by the Independent General Partners for Mezzanine and Other Investments and related Follow On Investments which are consistent with an exemptive order of the Securities and Exchange Commission under the 1940 Act concerning, inter alia, such guidelines.

"Incapacity" means, as to any Person, the entry of an order for relief in a bankruptcy proceeding ("bankruptcy"), death, adjudication of incompetence or insanity, dissolution or termination, as the case may be, of such Person.

"Independent" means any Person who is not an "interested person", (as such term is defined in Section 2(a)(19) of the 1940 Act), of the Partnership.

"Independent General Partners" means any individual person who becomes a General Partner of the Partnership as provided herein and who is not an "interested person" (as such term is defined in Section 2(a)(19) of the 1940 Act) of the Partnership, in such individual's capacity as a General Partner of the Partnership, and who is identified as an independent general partner on the books and records of the Partnership.

"Initial Closing" has the meaning given in Section 4A.1.

"Initial Limited Partner" means James P. Pappas.

"Interest" means the interest of a Partner in the Partnership as determined under this Agreement. Reference to a majority or a specified percentage in Interest of the Limited Partners means Limited Partners whose combined Capital Contributions represent over 50% or such specified percentage, respectively, of the aggregate Capital Contributions of all Limited Partners.

"Interim Investment Period" means the 24-month period beginning on the effective date of the Prospectus.

"Investment" means a Temporary Investment or an Enhanced Yield Investment, as the context requires.

"Investment Adviser" means Equitable Capital in its capacity as investment adviser to the Partnership pursuant to an investment advisory agreement referred to in Section 5.2, or any successor thereto.

"Investment Advisory Fee" has the meaning given it in Section 5.3A(4).

"Investment Period" means the 36-month period beginning on the date of the Final Closing.

"Limited Partner" means any Person who is a limited partner of the Partnership as shown on the books and records of the Partnership (whether an Additional Limited Partner or a Substituted Limited Partner) at the time of reference thereto in such Person's capacity as a limited partner of the Partnership.

"Liquidation Profits or Losses" means all Profits or Losses realized by the Partnership from and after the first day of the fiscal year which includes the date of dissolution pursuant to Section 9.1.

"Managed Company" means any Portfolio Company to which the Partnership "makes available significant managerial assistance" as such term is defined in Section 2(a)(47) of the 1940 Act.

"Managing General Partner" means Equitable Capital in its capacity as, and/or any other Person which becomes Managing General Partner of the Partnership as provided herein, in such Person's capacity as managing general partner of the Partnership, and which is identified as a managing general partner on the books and records of the Partnership.

"Media Company" means a Person that, directly or indirectly, owns, controls or operates a broadcast radio or television station, a cable television system, a daily newspaper (as defined in Section 73.3555 of the FCC's rules and regulations, as may be amended from time to time), or any communications facility operated pursuant to a license granted by the FCC and subject to the provisions of Section 310(b) of the Communications Act.

"Mezzanine Investment" means an investment by the Partnership in connection with a leveraged acquisition, leveraged recapitalization or other leveraged transaction consisting primarily of subordinated debt and/or preferred stock which may be combined with an equity participation and/or combined with an interest in senior debt and which has been approved by the Independent General Partners or has been determined by the Independent General Partners to meet the Guidelines.

"MGP Distribution" means any distribution to the Managing General Partner provided for in Sections 4.1B(2)(c) and (d), and 4.2B(2)(d) and (e), and identified therein as an MGP Distribution.

"MGP Note" has the meaning set forth in Section 3.1D.

"MLPF&S" means Merrill Lynch Capital Markets, Merrill Lynch, Pierce, Fenner & Smith Incorporated, as selling agent in connection with the sale of Units.

"Net Capital Contribution" means, with respect to any class of Partners, the aggregate amount of such Partners' Capital Contributions reduced by the amount of Organizational and Offering Expenses charged to such Partners' Capital Accounts.

"Net Capital Contributions represented by an Investment" means as to any Temporary Investment or

Enhanced Yield Investment, as the context requires, at any specified time, an amount computed as follows:

$$\text{NCCI} = \text{TCI} [\times \text{EP}]$$

Where: NCCI = Net Capital Contributions
represented by an Investment

TCI = Total Cost to the Fund of
Investment

[EP = Equity Percentage

EP = $\frac{\text{Available Capital} - \text{Outstanding Debt}}{\text{Available Capital}}$]

provided that to the extent an Investment is purchased with Available Cash from Investments or Available Capital Proceeds, the TCI of such Investment shall only include the portion of the cost of such Investment paid from the NCCI realized by the Partnership and reinvested in such Investment and provided further that any amount that would be NCCI but for the foregoing proviso shall be distributed pursuant to Section 4.1 or 4.2 as applicable, in a manner that reflects the source of such amount.

"Net Profit" means the excess of cumulative Profits over cumulative Losses.

"1940 Act" means the Investment Company Act of 1940 and the rules and regulations thereunder, as amended by the Small Business Investment Incentive Act of 1980, and as amended from time to time.

"Non-Managed Company" means any Portfolio Company which is not a Managed Company.

"Non-U.S. Partner" means a Limited Partner organized by Equitable Capital as a corporation, trust or partnership under the laws of a foreign state, the securities of which Limited Partner are offered exclusively to investors who are neither residents of the United States of America, its territories or possessions nor who are citizens thereof.

"Notification" means a writing, containing the information required by this Agreement to be communicated to any Person, sent as provided in Section 13.4.

"Operating Cash Expenses" means, with respect to any period selected by the Partnership for accounting purposes, those items of operating cash expenditures of the Partnership set forth in clauses (1) through (4) of the definition of "Available Cash from Investments".

"Organizational and Offering Expenses" means the amount of selling commissions, financial advisory fees, actual marketing and sales expenses reimbursed by the Partnership and organizational and offering expenses, including, but not limited to, amounts expended for accounting, legal, printing and clerical expenses of the Partnership, registration and filing fees of any kind and mailing and courier expenses, paid by the Partnership and the legal fees and related expenses of counsel to MLPF&S in connection with the sale of Units to the Additional Limited Partners.

"Other Investment" means an investment by the Partnership, other than a Mezzanine Investment, a related Follow On Investment or a Temporary Investment, in a Portfolio Company which has been approved by the Independent General Partners or has been determined by the Independent General Partners to meet the Guidelines.

"Other Partnership" means [Equitable Capital Partners II, L.P.] [Equitable Capital Partners (Retirement Fund) II, L.P.], a Delaware limited partnership.

["Outstanding Debt" means, as of any date of determination, the aggregate principal amount of any borrowings by the Partnership outstanding at such time.]

"Partner" means any General Partner or Limited Partner of the Partnership.

"Partnership" means the limited partnership formed and continued by and governed under and pursuant to this Agreement as such limited partnership may from time to time be constituted.

"Person" means any individual, corporation, partnership, trust, unincorporated organization or association, or other entity.

"Portfolio Company" means a Person in which the Partnership has made an Enhanced Yield Investment.

"Prime Rate" means the rate per annum from time to time announced by The Chase Manhattan Bank, N.A. in New York, New York as its base lending rate.

"Priority Return" means, as to any class of Partners, the amount equal to a cumulative, noncompounded return of 10% per annum on the average daily amount of the Gross Capital Contributions represented by Enhanced Yield Investments allocable to such class of Partners.

"Profits" and "Losses" means the profits or losses of the Partnership as determined in accordance with federal income tax principles, but (i) taking into account any item of income or gain which is exempt from taxation and any expenditures which under the Code and Treasury Regulations thereunder would be deemed to be described in Section 705(a)(2)(B) of the Code and (ii) treating the cost of any Investment as its Carrying Value.

"Prospectus" means at the time of reference thereto the prospectus contained in the Registration Statement at the time in effect; except that if any prospectus filed by the Partnership pursuant to Rule 497(b) or (d) under the Securities Act of 1933 differs from the prospectus contained in the Registration Statement, and no post-effective amendment to the Registration Statement has been filed subsequent to the filing of such Rule 497(b) or (d) prospectus, then the term "Prospectus" refers to the Rule 497(b) or (d) prospectus from and after the time it is delivered to the Securities and Exchange Commission for filing.

["Refinancing" means (i) any borrowing incurred or made to recapitalize or refinance the Partnership's investment in any specified Enhanced Yield Investment or any component thereof after the Investment Period and any Reinvestment Period applicable to such Enhanced Yield Investment and (ii) any borrowing incurred in anticipation of a Sale provided such Sale is the subject of an executed contract or other binding commitment at the time of such borrowing.]

["Refinancing Fee" means any fee or commission borne by the Partnership and paid to any other Person for placing or arranging any Refinancing.]

"Registration Statement" means the registration statement filed by the Partnership and the Other Partner-

ship with the Securities and Exchange Commission on Form N-2 registering units of limited partner interest in the Partnership to be sold to the Additional Limited Partners and units of limited partner interest in the Other Partnership under the Securities Act of 1933 at the time such registration statement becomes effective; except that if the Partnership files a post-effective amendment to the registration statement or a new registration statement the prospectus included in which may be used by the Partnership pursuant to Rule 429 under the Securities Act of 1933 (or any corresponding provision of succeeding rules or regulations of the Securities and Exchange Commission), then the term "Registration Statement" shall, from and after the declaration of the effectiveness of such post-effective amendment or such new registration statement, refer to the registration statement as amended by such post-effective amendment thereto or the then effective registration statement, as the case may be.

"Reinvestment Period" means, with respect to the proceeds of an Investment liquidated within the Investment Period the period ending at the later of (1) the last day of the twelve-month period beginning on the date of such liquidation and (2) the last day of the Investment Period.

"Related Person" means, in the case of a Limited Partner that is not an individual, any officer, director or equivalent non-corporate official of such Limited Partner.

"Restricted Person" means (a) a corporation organized under the laws of the United States or any state, territory, or possession of the United States in which any officer is an Alien or more than one-fourth of the directors are Aliens, or of which any of the "capital stock" (as such term is used in Section 310(b) of the Communications Act and has been interpreted by the FCC) is owned of record or voted by Aliens; (b) a partnership organized under the laws of the United States or any state, territory, or possession of the United States in which any partner is an Alien; or (c) any other Person (other than an individual) of which any of the "capital stock" (as such term is used in Section 310(b) of the Communications Act and has been interpreted by the FCC) is owned of record or voted by Aliens.

"Return of Capital" means (1) any return of capital pursuant to Section 3.4 or 3.5C, (2) with respect

to Enhanced Yield Investments, any Enhanced Yield Distributions pursuant to Section 4.2 not in excess of Net Capital Contributions represented by Enhanced Yield Investments then or theretofore liquidated and not reinvested, (3) with respect to Temporary Investments, any distributions, other than Enhanced Yield Distributions, pursuant to Section 4.2 not in excess of Net Capital Contributions represented by Temporary Investments then or theretofore liquidated and not reinvested and (4) any return to the Managing General Partner upon liquidation of the principal amount of any MGP Notes contributed by the Managing General Partner to the Partnership.

"Sale" means any sale, exchange, disposition or realization upon any Temporary Investment or Enhanced Yield Investment (other than receipt of Capital Contributions), provided, however, that [(i)] the receipt by the Partnership of any amount derived from interest or dividends on Investments (including on investment of any Capital Contributions [or Partnership borrowings]) or otherwise shall not be considered a Sale for the purpose of this Agreement [and (ii) the receipt by the Partnership of any proceeds of a Financing or Refinancing shall not be considered a Sale for the purpose of this Agreement].

"Sales Commission" means any fee or commission paid by or on behalf of the Partnership in connection with the sale or other disposition of any Enhanced Yield Investments, whether designated as a sales commission, disposition fee, nonrecurring advisory fee or any fee, commission or compensation of similar nature however designated and however treated for tax or accounting purposes[, but does not include Refinancing Fees].

"State" means the State of Delaware.

"Subscription Agreement" means the subscription agreement executed by each Additional Limited Partner in the form included as Exhibit B to the Prospectus.

"Subsequent Closing" has the meaning given in Section 4A.1.

"Substituted Limited Partner" means any Person admitted to the Partnership as a Limited Partner pursuant to the provisions of Section 8.3 and shown as a Limited Partner on the books and records of the Partnership.

"Tax-Exempt Investor" means any individual retirement account, any trust formed as part of a Keogh or corporate pension or profit-sharing plan qualified under Section 401(a) of the Code, any organization described in Section 501(c) of the Code and any governmental entity tax-exempt under Section 115 of the Code.

"Temporary Investment" means an investment in U.S. government securities, certificates of deposit with maturities of less than one year, commercial paper (rated or unrated) and other short-term securities held by the Partnership.

"Treasury Regulation" means any regulation promulgated under the Code, as in effect on the date hereof.

"Unit" means an Interest of a Limited Partner sold at the Initial Closing for a subscription price of \$1,000 (less any Deemed Sales Commissions and Financial Advisory Fees) or an Interest of a Limited Partner sold at any other Closing having rights (other than any right to equalizing distributions pursuant to Section 4A.2A) to share in distributions and allocations of Profit and Loss equivalent to the rights attributable to a Unit sold at the Initial Closing.

ARTICLE TWO

CONTINUATION; NAME, PLACE OF BUSINESS AND OFFICE; PURPOSE; TERM

Section 2.1. Continuation. The parties hereto hereby continue the limited partnership heretofore formed pursuant to the provisions of the Act, and agree that the rights and liabilities of the Partners shall be as provided in the Act, except as herein otherwise expressly provided.

Section 2.2. Name, Place of Business and Office. The name of the limited partnership formed and continued hereby is [Equitable Capital Partners II, L.P.] [Equitable Capital Partners (Retirement Fund) II, L.P.] The business of the Partnership may be conducted upon compliance with all applicable laws under any other name designated in writing by the Independent General Partners provided that such name shall include the words "limited

partnership" or the abbreviation "L.P.". The principal place of business of the Partnership shall be at 1285 Avenue of the Americas, New York, New York 10019. The Managing General Partner may at any time change the location of such office, may establish such additional offices as it shall deem advisable and may maintain offices at the place of business of the Fund Administrator.

Section 2.3. Purpose. The Partnership is authorized and empowered to carry out any business activities permitted under the Act including, without limitation, to elect to operate, and to operate, as a business development company under the 1940 Act. The Partnership's investment objective is to provide the Partners with current income and capital appreciation by investing primarily in Enhanced Yield Investments as set forth in the Prospectus. The Partnership may engage in any and all activity necessary, convenient or incidental to the accomplishment of the foregoing to the extent permitted under the Act.

Section 2.4. Term. The Partnership commenced on September 28, 1989 and shall continue in full force and effect until December 31, 2000 or ten years from the date of the Final Closing, if later, unless extended by the Independent General Partners for up to two additional one-year periods from such date, if the Independent General Partners determine in each instance that each such extension is in the best interests of the Partnership, or until dissolution prior thereto pursuant to the provisions hereof.

Section 2.5. Registered Agent and Registered Office. The Partnership shall maintain a registered office in the State at c/o The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, New Castle County, Delaware 19801. The name and address of the registered agent for service of process on the Partnership in the State is The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, New Castle County, Delaware 19801.

Section 2.6. Qualification in Other Jurisdictions. The General Partners shall cause the Partnership to be qualified, formed, reformed or registered under assumed or fictitious name statutes or similar laws in any jurisdiction in which the Partnership owns property or

transacts business if such qualification, formation, reformation or registration is necessary in order to protect the limited liability of the Limited Partners or to permit the Partnership lawfully to own property or transact business. The Independent General Partners shall execute, file and publish all such certificates, notices, statements or other instruments necessary to permit the Partnership to conduct business as a limited partnership in all jurisdictions where the Partnership elects to do business and to maintain the limited liability of the Limited Partners. The Independent General Partners may cause the Partnership to obtain in each such jurisdiction opinions of local counsel satisfactory to the Independent General Partners as to such organization or qualification and as to the maintenance of the limited liability of the Limited Partners under the laws of each such jurisdiction.

ARTICLE THREE

PARTNERS AND CAPITAL

Section 3.1. General Partners.

A. The General Partners shall consist of such number of Independent General Partners as shall be fixed pursuant to Section 3.1B and a Managing General Partner. The names, residence, business or mailing addresses and Capital Contributions of the General Partners are set forth on the books and records of the Partnership, as amended from time to time.

B. The number of Independent General Partners shall be fixed from time to time by the Independent General Partners then in office, provided, however, that the number of Independent General Partners shall in no event be less than two or more than nine (except prior to the initial public offering of Units). A majority of the General Partners shall at all times be Independent General Partners. If at any time the number of Independent General Partners is less than a majority of the General Partners, within 90 days thereafter, the remaining Independent General Partners shall designate and admit one or more successor Independent General Partners so as to restore the number of Independent General Partners to a majority of the General Partners.

C. Any Person elected or appointed to the office of General Partner shall thereafter hold office until his removal pursuant to Section 6.3 or withdrawal pursuant to Section 6.1 or 6.2, as the case may be, or until his successor shall have been elected and admitted at a meeting of Limited Partners called for the purpose of electing General Partners. General Partners may succeed themselves in office. The Independent General Partners may designate and admit successor Independent General Partners to fill vacancies created by the retirement or withdrawal of an Independent General Partner pursuant to Section 6.1 or by the removal of an Independent General Partner by the Independent General Partners pursuant to Section 6.3 and the Independent General Partners may also designate and admit Independent General Partners to fill any vacancies created by an increase in the number of Independent General Partners pursuant to Section 3.1B. In the event that no Independent General Partner remains, the Managing General Partner shall perform all duties of an Independent General Partner under this Agreement to the extent permitted by the 1940 Act and shall, within 90 days, call a special meeting of Limited Partners for the purpose of electing and admitting Independent General Partners. Each Limited Partner hereby Consents to the admission of any successor Independent General Partner pursuant to this Section 3.1C and pursuant to Section 3.1B, and no further Consent shall be required.

D. On any date of admission of the Additional Limited Partners pursuant to Section 3.3A, and thereafter, the Managing General Partner shall make contributions to the capital of the Partnership in the form of one or more non-interest bearing demand notes (each an "MGP Note") so that the aggregate principal amount of such notes held by the Partnership shall be at all times at least equal to the excess, if any, of 1.01% of the aggregate Net Capital Contributions of all Limited Partners, over the amount of any Capital Contributions theretofore made by the Managing General Partner. In the event any Limited Partner receives a Return of Capital, the aggregate principal amount of the MGP Notes shall be reduced by an amount equal to the excess of 1.01% of such Return of Capital to such Limited Partner over the Return of Capital, if any, to the Managing General Partner upon such event.

E. No General Partner, as such, shall be required to lend any funds to the Partnership or to make any additional Capital Contribution to the Partnership

except that the Managing General Partner shall be obligated to make payments of principal on any MGP Note in accordance with the terms thereof.

F. No Alien may serve as an Independent General Partner, including any successor or additional Independent General Partner admitted in accordance with Section 3.1B or Article Six.

Section 3.2. Initial Limited Partner.

A. The name, business, mailing or residence addresses of the Initial Limited Partner are set forth on the books and records of the Partnership.

B. Immediately following the admission of the first Additional Limited Partners pursuant to Section 3.3A, the Initial Limited Partner shall withdraw from the Partnership and shall be entitled to receive forthwith his Capital Contribution, without interest or reduction.

Section 3.3. Additional Limited Partners.

A. The Managing General Partner is authorized to admit Additional Limited Partners to the Partnership. In such event, the provisions of Section 8.4 shall apply. The Capital Contributions of the Additional Limited Partners shall be made in cash. The manner of the offering of the Units, the terms and conditions under which subscriptions for such Units will be accepted, and the manner of and conditions to the sale of Units to subscribers therefor and the admission of such subscribers as Additional Limited Partners will be as provided in the Prospectus in all material respects (except with respect to any Additional Limited Partner purchasing Units not registered under the Registration Statement) and subject to any provisions hereof. Sales compensation paid to Affiliates of the Managing General Partner in connection with the offering of Units shall be consistent with applicable laws, rules and regulations. A Person may be admitted as an Additional Limited Partner and shall become bound by this Agreement (i) if such Person (or a representative authorized by such Person orally, in writing or by other action such as payment for his Units) executes this Agreement or any other writing (including, without limitation, the Subscription Agreement) evidencing the intent of such Person to become an Additional Limited Partner or (ii) without such execution, if such Person (or a repre-

sentative authorized by such Person orally, in writing or by other action such as payment for his Units) complies with the conditions for becoming an Additional Limited Partner as set forth in this Agreement and requests (orally, in writing or by other action such as payment for his Units) that the books and records of the Partnership reflect such admission. By his execution of this Agreement, any such Person so admitted as an Additional Limited Partner shall be bound by the provisions of the Subscription Agreement and shall be deemed to have made each of the representations and warranties contained therein. Additional Limited Partners shall be admitted to the Partnership as Limited Partners at the time provided in Section 8.4 hereof.

B. The names, residence, business or mailing addresses and Capital Contributions of the Additional Limited Partners are set forth on the books and records of the Partnership, as amended from time to time.

C. No Limited Partner, as such, shall be required or authorized to lend any funds to the Partnership or, after his Capital Contribution shall have been paid, subject to the provisions of Sections 3.6B and 3.6C, to make any further Capital Contribution to the Partnership.

Section 3.4. Certain Returns of Capital.

A. Subject to Section 4A.3, any portion of the Capital Contributions of the Partners that has not been invested or committed for investment (as set forth in Section 3.4A(3) below) initially in Enhanced Yield Investments within the Investment Period or any portion of those Capital Contributions which were invested in Enhanced Yield Investments and then liquidated within the Investment Period and which have not been reinvested or committed to reinvestment (as set forth in Section 3.4A(3) below) in Enhanced Yield Investments within the applicable Reinvestment Period (except for any amount of such Capital Contribution (i) utilized by the Partnership to pay Organizational and Offering Expenses, as provided in the Prospectus, or (ii) utilized or reserved to pay Operating Cash Expenses of the Partnership), shall be distributed as soon as practicable after the end of the Investment Period or such Reinvestment Period, as the case may be, to the Partners, together with interest actually earned thereon and not theretofore distributed, pro rata in proportion to their Capital Contributions, by the Partnership as a

return of capital. For the purpose of this Agreement, funds will be deemed to have been committed to investment or reinvestment and will not be returned to the Limited Partners to the extent that:

(1) such funds have been utilized or set aside to pay Acquisition Fees, Acquisition Expenses, [Financing Fees or Financing Expenses,] if any, in connection with (a) any Partnership funds invested or committed for investment (as set forth in Section 3.4A(3) below) in Enhanced Yield Investments within the Investment Period or (b) in connection with any Partnership funds which were invested in Enhanced Yield Investments and then liquidated within the Investment Period and were reinvested or committed for reinvestment in Enhanced Yield Investments within the applicable Reinvestment Period;

(2) such funds have been set aside for working capital;

(3) such funds have been set aside to pay amounts payable, or expected to be payable, under binding written agreements or under agreements in principle, commitment letters, letters of intent or understanding, option agreements or any similar contracts or understandings which have been executed and (a) are in effect at the end of the Investment Period or, (b) as to funds which were invested in Enhanced Yield Investments and then liquidated within the Investment Period, are in effect at the end of the applicable Reinvestment Period;

(4) such funds have been set aside and reserved at the end of the Investment Period to make contingent payments in connection with any Enhanced Yield Investment, including for Follow On Investments; or

[(5) such funds have been utilized or set aside to provide compensating balances, reserve funds, escrow funds, advance payments or other similar funds or set-asides required, or reasonably anticipated by the Managing General Partner to be required, by lenders in connection with any Financing the proceeds of which are to be applied with, or to recapitalize, any Partnership funds invested or committed for investment within the Investment Period or, as to